

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CR 2002-006143

06/11/2003

HONORABLE BRIAN R. HAUSER

CLERK OF THE COURT
M. Cearfoss
Deputy

FILED: 06/12/2003

STATE OF ARIZONA

MARIA Y ARMIJO

v.

TONATIHU AGUILAR

ROBERT L STORRS

MINUTE ENTRY

The court has considered the defendant's motion to declare mitigating factors established under doctrine of issue preclusion, state's response and the reply.

The defendant argues that the jury should be collaterally estopped from deciding two mitigating factors in this case due to a finding of the mitigating factors age and diminished capacity in a prior capital case involving this defendant. This argument fails in two respects. First, prior courts have already held that collateral estoppel does not apply to the sentencing phase of a capital trial. Second, this argument does not take into account the change in law regarding sentencing in a death penalty case. In the defendant's first murder trial, which was tried under the old law, it was the duty of the judge to find mitigating and aggravating factors; however, it is now the duty of the jury to make such a decision. The prior judge's ruling cannot preclude the jury in this case from fulfilling its duty under the existing statute.

The finding of mitigating circumstances in CR 1997-009340, the Imperial case, is not binding on this jury because this is a different case and mitigating circumstances are fact-specific. According to statute, the trier of fact has to find the mitigating circumstances in relation to the specific facts of the case. The issue is whether a death penalty is warranted considering the offense and the defendant's character, propensities or record. Thus, it is irrelevant that a prior court has found mitigating circumstances in another crime involving the same defendant. The doctrine of collateral estoppel prohibits the relitigation of an issue already determined in a prior cause of action. People v. Page, 155 Ill.2d 232, 248 (1993). However, because the issue in this case is different from that of the prior case, collateral estoppel is not applicable. A mitigating circumstance is not an "ultimate fact" subject to being precluded on resentencing under the doctrine of collateral estoppel. King v. Dugger, 555 So.2d 355, 358 (1990). Collateral estoppel

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does not require a jury to find those mitigating factors that were found to exist by a previous sentencing body. Johnson v. State, 303 Md. 487 (1985). Furthermore, courts have previously held that the judgment of one court to impose a life sentence instead of the death penalty did not preclude a later court from imposing the death penalty upon the same defendant. Page, 155 Ill.2d at 271. In other words, a court's rejection of the death penalty in one murder case does not make such a penalty inappropriate in another murder case. Id. at 272; State v. Rossi, 171 Ariz. 276, 281 (1992).

It is also significant that the rules for sentencing in Arizona have changed since the Imperial case. While it used to be the duty of the court to decide upon mitigating and aggravating factors, that duty is now left to the jury. Ring v. Arizona, 122 S. Ct. 2428 (U.S. 2002). The law now states that the trier of facts has to determine the presence of any possible mitigating factors. A.R.S. § 13-703. Under the law, it is the duty of the jury alone to determine whether circumstances are to be considered mitigating. Therefore the decision by the court in the Imperial case cannot affect the decision of the jury in the present case if the current statute is to be followed.

Accordingly, IT IS ORDERED denying the defendant's motion to declare mitigating factors established under doctrine of issue preclusion.